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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/691,404	10/21/2003	Michael Brunn	4285-7	6839

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NEW YORK, NY 10176

EXAMINER

NGUYEN, TRINH T

ART UNIT	PAPER NUMBER
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3644

DATE MAILED: 02/03/2005

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary

Application No.

10/691,404

Applicant(s)

BRUNN, MICHAEL

Examiner

Trinh T Nguyen

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 29 November 2004.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1,2,4,5,7-12,15,18-29 and 31-55 is/are pending in the application.
- 4a) Of the above claim(s) 10,11,18,19,21,32,33,35,40,41,48,50,51,53 is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1,2,4,5,7-9,12,15,20,22-29,31,34,36-39,42-47,49,52,54 and 55 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
- ☐ Certified copies of the priority documents have been received.
 - ☐ Certified copies of the priority documents have been received in Application No. _____.
 - ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- ☐ Notice of References Cited (PTO-892)
- ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- ☐ Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)
Paper No(s)/Mail Date _____.
- ☒ Interview Summary (PTO-413)
Paper No(s)/Mail Date Attached.
- ☐ Notice of Informal Patent Application (PTO-152)
- ☐ Other: _____.

DETAILED ACTION***Election/Restrictions***

1. Newly submitted claims 40, 41, 48, 50, 51, and 53 are directed to an invention that is independent or distinct from the invention originally claimed for the following reasons: claims 40, 41, 50, and 51 are directed to Species IV (Figures 7A & 7B); claim 48 is directed to Species III (Figures 6A & 6B); and claim 53 is directed to Species II (Figures 5A & 5B).

Since applicant has received an action on the merits for the originally presented invention, this invention has been constructively elected by original presentation for prosecution on the merits. Accordingly, claims 40, 41, 48, 50, 51, and 53 have been withdrawn from consideration as being directed to a non-elected invention. See 37 CFR 1.142(b) and MPEP § 821.03.

Claim Rejections - 35 USC § 112

2. The following is a quotation of the first paragraph of 35 U.S.C. 112:

The specification shall contain a written description of the invention, and of the manner and process of making and using it, in such full, clear, concise, and exact terms as to enable any person skilled in the art to which it pertains, or with which it is most nearly connected, to make and use the same and shall set forth the best mode contemplated by the inventor of carrying out his invention.

3. Claims 7, 8, and 12 are rejected under 35 U.S.C. 112, first paragraph, as failing to comply with the written description requirement. The claim(s) contains subject matter which was not described in the specification in such a way as to reasonably convey to one skilled in the relevant art that the inventor(s), at the time the application was filed, had possession of the claimed invention. In this case, the claim 7 (currently amended) indicates that "the weighty and frangible ballast further comprises metallic particles" and the claim 12 (currently amended)

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indicates that "the weighty and frangible ballast further comprises at least one of lead particles and tungsten particles". However, it is noted that the specification does not disclose such limitations (i.e. paragraph [0031] in the specification discloses that unconsolidated lead and/or unconsolidated tungsten particles may be used as an alternative and not a combination with "a mixture of zinc powder and graphite powder" as claimed in claim 1 (currently amended). Further note that claim 1 (currently amended) is no longer a generic claim.

Claim Rejections - 35 USC § 112

4. The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

5. Claims 1, 2, 4, 5, 7-9, 12, 15, 20, 22-29, 31, 34, 36-39, 42-47, 49, 52, 54, and 55 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

In claim 1 (currently amended): lines 14-16, the phrase "where the graphite powder coats the zinc particles comprising the zinc powder" is confusing because it is unclear how the zinc particles comprising the zinc powder.

In claim 9, the phrase "the metallic particles" lacks antecedent basis.

In claims 44 and 54, the phrase "the delay fuse composition" lacks antecedent basis.

In claim 26 (currently amended): lines 7-8, the phrase "in which the graphite powder coats the zinc particles comprising the zinc powder" is confusing because it is unclear how the zinc particles comprising the zinc powder.

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In claim 27 (currently amended): lines 11-13, the phrase "in which the graphite powder coats the zinc particles comprising the zinc powder" is confusing because it is unclear how the zinc particles comprising the zinc powder.

Allowable Subject Matter

6. Claims 1, 2, 4, 5, 7-9, 12, 15, 20, 22-29, 31, 34, 36-39, 42-47, 49, 52, 54, and 55 would be allowable if rewritten or amended to overcome the rejection(s) under 35 U.S.C. 112, 2nd paragraph and 1st paragraph (only for claims 7, 8, and 12), set forth in this Office action.

Conclusion

7. Applicant's amendment necessitated the new ground(s) of rejection presented in this Office action. Accordingly, **THIS ACTION IS MADE FINAL**. See MPEP § 706.07(a). Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire **THREE MONTHS** from the mailing date of this action. In the event a first reply is filed within **TWO MONTHS** of the mailing date of this final action and the advisory action is not mailed until after the end of the **THREE-MONTH** shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than **SIX MONTHS** from the date of this final action.

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8. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Trinh T Nguyen whose telephone number is (703) 306-9082. The examiner can normally be reached on M-F (9:30 A.M to 6:00 P.M).

The examiner's supervisor, Teri Luu can be reached on (703) 305-7421. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).



Trinh T Nguyen
Patent Ex.
Art Unit 3644
1/31/05